IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 327 of 2000.

Judgement reserved on: 9.11.2006.

Date of decision: 24.11.2006

Mahant Rajinder Gir, Chela Mahant Shiv Gir …….. Appellant.

Vs.

The Commissioner
(Deputy Commissioner, Hamirpur) & anr. ……Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Kuldip Singh, Senior Advocate with M/s Chander Shekhar Sharma and Karan Singh, Advocates.

For the Respondents : Mr. K.D.Sood, Advocate with Ms. Sunita Sharma, Advocate.

Surjit Singh, Judge.

This is plaintiff's appeal against the judgement of the first appellate court, whereby affirming the decree of dismissal of the suit of the plaintiff passed by the trial court, the appeal of the appellant has been dismissed.

2. Relevant facts may be noticed first. Plaintiff- appellant, who is Mahant of Baba Balak Nath Temple, Deot Sidh,Tehsil Barsar, District Hamirpur, filed a suit for declaration that he was owner of the properties, comprised in khewat No. 383, khatoni No. 474, Khasra Nos. 2302/904, 2303/904, 915, measuring 24 Kanals 2 Marlas,

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Whether the reporters of the local papers may be allowed to see the Judgment?

situated in Tikka Chakmoh, Tehsil Barsar, District Hamirpur, hereinafter called suit property and that the order dated 6.12.1998, passed by the Financial Commissioner, ordering the incorporation of the aforesaid property in the register of temple property, under Section 6 of the H.P. Hindu Public Religious Institutions and Charitable Endowments Act, 1984, (hereinafter referred to as the Act), was illegal, void and hence not binding upon him. It was alleged that the plaintiff is Mahant of the shrine of Baba Balak Nath, Deot Sidh. As a Mahant, as per wazib-ul-arz, he was entitled to 6 and ½ annas share per rupee out of the offerings made at the aforesaid shrine. The property of the shrine was comprised in Khewat No. 383 min, Khatauni No. 476, khasra No. 918, measuring 3 Kanals 6 Marlas. This property is entered in the ownership and possession of the shrine. The suit property is different from the shrine property and it is entered in the ownership and possession of the plaintiff. The State of Himachal Pradesh enacted a law, known as H.P. Hindu Public Religious Institutions and Charitable Endowments Act, 1984. This Act came into force on 26th November, 1984. Section 6 of the Act, provides for preparation and maintenance of a register of every Hindu Public Religious Institutions and Charitable Endowment, to which the Act applies. The plaintiff in accordance with the provision of Section 6 of the said Act, prepared a register and submitted it to the Commissioner, appointed for the purpose of the Act, as per requirement of sub-section (2) of Section 6, aforesaid. The Commissioner without making any enquiry, in terms of sub-section (3) of Section 6, of the Act, included the suit property, which is different

from the property of the shrine and is in fact the personal property of the plaintiff in the aforesaid register. The plaintiff filed a Civil Writ Petition, being CWP No. 338 of 1987, titled Mahant Shiv Gir vs. State of Himachal Pradesh in this court, which was disposed of vide order dated 25.4.1988. The order reads as follows:-

> "In the present case, after the petitioner prepared, signed, verified and submitted the register to the Commissioner under sub-section (2) of Section 6 of the Himachal Hindu Public Religious Institutions Act, 1984 (hereinafter referred to as `the Act') no enquiry appears to have been held under sub-section (3) of the said section. On the facts and in the circumstances of the case, having regard to the nature of entries made in the register, it was expedient and necessary to hold an appropriate enquiry in consonance with the principles of natural justice, if any alterations, omissions or additions were to be made in the register, in other words, the claim(s) advanced by the petitioner, if proposed to be rejected, were required to be enquired into by affording to him a reasonable opportunity of establishing such claim(s) by leading evidence, if he so desired and by controverting the evidence, if any, to the contrary procured by or in possession of the Commissioner and by affording him through a counsel if he so desired an opportunity of presenting his case orally (and supplemented by written arguments, if submitted) to the Commissioner on the basis of such evidence and in light of the legal provisions, since the decision on the question(s) raised may affect or tend to affect his civil right and also right to property, a reasoned order must be passed. No such steps appear to have been taken in this case.
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> Under the circumstances, at this stage it is expedient in the interest of justice to direct the competent authority to hold an enquiry under sub-section (3) of Section 6 of the Act

in accordance with law and in light of the observations made in the course of this order under sub-Section (3) of Section 6, the enquiry is required to be held by the Commissioner, that is, the Deputy Commissioner of the concerned District. The court finds, however, that the Deputy Commissioner has filed a detailed affidavit-in-reply to the petition reflecting a specific stand on the material issues in controversy between the parties. It would not be in consonance with the rules of natural justice, therefore, that the enquiry should be held by the same authority. The Court, therefore, directs that the enquiry, in the present case be held by the Financial Commissioner-cum-Secretary, Language, Art and Culture Department Himachal Pradesh. The petitioner has no objection to the enquiry being held by the said authority in view of the special circumstances of the case mentioned here in above. The enquiry will be completed on or before July 31,1988. It is further directed that till the enquiry is held and completed, the status-quo qua the administration of the temple and the possession of its property will be maintained.

In light of the foregoing orders, no other relief is required to be granted to the petitioner at the present stage. The petition is accordingly disposed of with liberty reserved to the petitioner to seek appropriate remedy in accordance with law, in case he is dissatisfied with the decision of the Financial Commissioner-cum-Secretary."

3. In compliance with the aforesaid order passed by this court in the said Civil Writ petition, the Financial Commissioner, passed the following orders on 6.12.1988:-

"On an overall understanding of the situation, it appears that the Mahant being a celibate was not expected to apply his share in the temple income to the creation of his own personal assets. The income

was provided to him in order to meet his expenses and to maintain the dignity of his office. But in case the income exceeded his expenditure, the surplus should naturally have been spent on the temple for which the offerings had been initially made by the devotees.

We should therefore, ignore the revenue entries showing the land in Khasra No. 2303/904 as being in his ownership as being notional or nominal entries. This land has definitely been along dedicated to the temple and should even now be treated as temple property. The same argument applies, to the four-storeyed residential complex, garages, store, Samadhi, langer and dispensary, which are all hereby declared to be temple property. However, the Mahant should be allowed one or two rooms for his residence within the four storeyed residential complex, as he has to perform certain duties in the temple. The exact area to be allowed may be decided by the new Managing Committee.

As far as Khasra No. 918 is concerned, the Mahant has no case at all as his name does not figure anywhere, either in the column of ownership or in that of possession.

It is, therefore, ordered that all entries in Form A register be modified in the light of the judgement passed by the Hon'ble High Court and the present order. Now that the management has passed to the new Managing Committee, the changes can be made by this committee. This also applies to the inaccuracies in various columns as pointed out in the replies of the D.C. Hamirpur and S.D.O. (C) Barsar which were not debated before me. The New Managing Committee should rectify the errors as per its own record."

4. The plaintiff filed the suit out of which this appeal arises challenging this order dated 6.12.1988 of the Financial Commissioner. He alleged that the order is illegal, void and without jurisdiction inasmuch as the suit property is not the property of the shrine, but the personal property of the plaintiff and hence it could not have been ordered to be included in Form-A register required to be prepared and maintained, under Section 6 of the Act.

5. Defendants raised a number of preliminary objections. It was alleged that the plaintiff had no cause of action, the suit was not maintainable, valuation for the purpose of court fee and jurisdiction had not been done properly, suit was barred by rule of res-judicata, the court did not have the jurisdiction, the suit was bad for non-joinder and mis-joinder of parties and plaintiff was estopped from filing the suit by his acts, deeds and conduct. On merits, it was alleged that the suit property was the property of the shrine, as there existed Sarai, samadhies and Langar building on this land and also because it was being used for the purposes of shrine, i.e. accommodating the pilgrims in the buildings, constructed on the suit property. It was alleged that the structures on the suit property had been raised by the successive Mahants of the shrine with the unspent portion of the offerings, which they had been keeping on account of their 6 and ½ annas share in every rupee of the offerings to the shrine and hence the plaintiff could not be heard to say that the suit property was his personal property.

6. Trial court framed various issues on the pleadings of the parties. Parties led evidence. On the conclusion of the trial, the trial

court held that the plaintiff was not the owner of the suit property, the order passed by the Financial Commissioner was lawful and plaintiff was not entitled to any relief. Issues based on the preliminary objections, viz. maintainability of the suit, suit being barred by rule of res-judicata, the court having no jurisdiction, the suit being bad on account of non-joinder and mis-joinder of necessary parties, the plaintiff being estopped from filing the suit by his acts, deeds and the suit having not been valued properly for the purpose of court fee and jurisdiction, were however, found against the defendants.

7. Plaintiff- appellant went in appeal to the court of District Judge. Appeal stands dismissed. Findings of the trial court have been affirmed.

8. The present appeal was admitted on the following substantial questions of law:-

1. Whether both the courts below were justified in deciding the case only on the basis of the report of the Financial Commissioner dated 6.12.1988 and without appreciating the other evidence on record.

2. Whether both the courts below were right in holding that the suit property was never the personal property of the plaintiff and the same has been rightly transferred to the ownership and possession of the Baba Balak Nath Temple Trust, by ignoring the revenue entries produced by the appellant wherein the plaintiff and his predecessors-in-interest have been shown to be the owner in possession of the suit property?

3. Whether the lower appellate court was justified in holding that since the plaintiff is a celibate who has no

family of his own, therefore, the presumption must be drawn that whatever property he holds or acquires is held or acquired on behalf of the temple to which his life is entirely devoted?

9. The learned District Judge has observed in his judgement that the plaintiff being a celibate, presumption has to be drawn that whatever property is held or is acquired by him belongs to the shrine.

10. I have heard the learned counsel for the parties and gone through the record.

11. As per entries in the record of rights, to which presumption of truth attaches, the plaintiff and the shrine are entered in possession of separate properties. Reference in this behalf may be made to the copy of jamabandi for the year 1984-85, Ex. D-5. A look at this copy of the jamabandi shows that the suit property and the property possessed by the shrine are part of Shamlat tikka, bearing khewat No. 383 min. The suit property has been assigned a separate khatauni number, i.e. 474 and it is shown in possession of the plaintiff as “Hissedar Nautor Darinda” (a co-sharer permitted to break the land). The shrine is recorded in possession of land comprised in two separate khataunis, i.e. 476 and 482. There is another khatauni, bearing No. 481. The land comprised in this khatauni is again recorded in possession of the plaintiff. This land is in the shape of “Gair Mumkin Sarai”. The plaintiff has laid no claim to the property comprised in this khatauni No. 481, may be for the reasons that it is a “Sarai”, being used for the night stay of pilgrims. A portion of the suit property to the extent of 4 Kanals, is recorded as

"Banjar Kadim", another portion to the extent of 15 Kanals is recorded as "Langar" and "Samadhi" and yet another portion, measuring 14 Marlas, has been recorded as "Gair Mumkin Abadi". From a reading of the entries in this jamabandi, it is clear that shrine, management of which has been taken over by the defendants, under the provisions of the Act, has its own entity which is different and separate from that of the plaintiff.

12. There is absolutely no evidence that the plaintiff has acquired the suit property from the income of the shrine. On the contrary the entry in the aforesaid jamabadi is to the effect that the plaintiff is in possession of the suit property in his capacity as a "Hissedar" (co-sharer in the Shamlat land).

13. An entry in the wazib-ul-urz prepared during the settlement of 1913-14, has also been placed on the record of the trial court. The same is mark-A. It is in Urdu. Its English version is also available. This entry in the wazib-ul-urz reads that Mahant Balram Gir, who was managing the affairs of the temple at the time of the settlement of 1913-14, was entitled to 6 and ½ annnas out of every rupee offered to the shrine and as regards the remaining part of the offerings, one Smt. Kumbhi was entitled to 3 annas, one Sh. Gosain was entitled to 2 annas 2 pies and the remaining income of 6 annas 4 pies was to be divided among the share holders in shamlat land proportionate to their recorded shares. The entry gives the impression that the income from the temple and some other items mentioned in this entry, like water flour mills and sale of grass growing on the shamlat land was divided among the Mahant and the

co-sharers in shamlat land on account of their being co-sharer in the shamlat land.

14. The entry in the jamabandi Ex. D-5, as already stated, leaves no doubt that the Mahant is a co-sharer in the shamlat land and he is in occupation of the suit property in his capacity as co-sharer and not on account of his being Mahant of the shrine. Therefore, in the face of this concrete and solid evidence, there was hardly any occasion for the lower appellate court to have drawn the presumption that the Mahants being celibates and having no families of their own could not own and possess any property in their own names and every item of property recorded in their ownership and possession belongs to the shrine.

15. Learned counsel for the respondents placed reliance upon three judgements to support the findings of the trial court and the first appellate court that the property is to be presumed to belong to the shrine. The same are **Raghunath Das** vs. **Gajpat Rai and others** [1934 Punjab Law Reporter 443], **Susil Chandra Sen and another** v. **Gobind Chandra Das and another** [AIR 1934 Patna 431] and **(Manda) Appa Rao Pantulu Garu and another** vs. **Budankayala Vignesam Subudhi and others** [AIR 1937 Madras 118]. In **Raghunath Das's** case (supra), what has been held is that the property owned by an institution, like a Thakurdwara, is generally entered in the name of the Mahant or the trustees. The judgement does not say authoritatively that in every case the property entered in the name of a Mahant is to be presumed to belong to the institution. In any case, in the light of the evidence, particularly the entries in the

record of rights, to which presumption of truth attaches, there was no need for resorting to the presumption. As already noticed the shrine and the Mahant are entered as two separate entities, owning and possessing separate properties, included in separate khataunies, even when forming parts of same khata.

16. In **Susil Chandra's** case (supra), it has been held that when the holder of a property is a person free from worldly attachments, is a celibate and has no family of his own, presumption is that what he holds or acquires is held or acquired on behalf of math, to which his life is entirely devoted. As already noticed, the suit property, as per entries in the record of rights is held by Mahant in his name, while the property belonging to the shrine, of which he is a Mahant, is entered in the ownership of the shrine and hence the question of drawl of any presumption does not arise.

17. **(Manda) Appa Rao's** case (supra) says that the income from the Math property is the Math property until Mahant spends it. This judgement was cited in support of the contention raised by the counsel for the respondents that the buildings on the suit property, particularly the Sarai (inn) have been erected with the income derived from the offerings of the shrine. For two reasons, the principle laid down in this judgement is not attracted to the facts of the case. Firstly, as noticed hereinabove, Mahant had been receiving a portion of the offerings to the extent of 6 and ½ annas out of every rupee, not only on account of his being the Mahant or the head priest or the Manager of the shrine, but also on account of his being a co-sharer in the shamlat land, on a portion of which the shrine stands.

He alone had not been receiving a portion of the offerings, but other co-sharers of the shamlat land had also been receiving a portion of the offerings, because they too are co-sharers in the shamlat land, on a part of which the shrine exists. Secondly, the Sarai (inn) does not stand on the suit property, though it does stand on a parcel of land, which too is recorded in the possession of the plaintiff. The Sarai (inn) stands on land entered against Khatoni No. 481 in jamabandi, copy Ex. D-5. The khasra number of this land is 2325/916. Its area is 1 Kanal 19 Mralas. The plaintiff has not laid any claim to this land.

18. The above stated position apart, the precedent relied upon by the counsel for the respondents to support the findings of the trial court and the first appellate court cannot be given too much weightage, in view of the following passage of "Hindu Law of Religious and Charitable Trusts", 4th Edn. Pages 358, 359 and 7.57, and 7.58 by Dr. B.K.Mukherjee, which has been quoted, with approval, by the Hon'ble Supreme Court in **Math Sauna and others** vs. **Kedar Nath alias Uma Shankar and others** [AIR 1981 SC 1878]:-

> "A Mohunt, and for the matter of that, any other Sanyasi can acquire personal property of his own….. The Pronamis given to a Mohunt are generally his personal property…….. The mere fact that a Mohunt is an ascetic does not raise any presumption that a a property in his possession is not his personal property. Strictly speaking, there is no presumption either one way or the other and in each case the burden is upon the plaintiff to establish that the properties in respect of which he is asking for possession are properties to the possession of which he is entitled in the right in which he sues".

19. Also, there is a judgement of Privy Council in **Raghbir Lala and others** vs. **Mohammad Said and others** [AIR (30) 1943 Privy Council 7], wherein it has been held that it is out of question to suppose that a man's religious opinions or professions can make him incapable in law of holding property.

20. The Financial Commissioner passed the order dated 6.12.1988, without taking into consideration the entries in the revenue papers, referred to hereinabove. He observed that the suit property had all along been dedicated to the temple and should now be treated as temple property. It is not understood how the Financial Commissioner assumed that the land had been dedicated. It is nobody's case that the land was dedicated by anybody to the temple. On the contrary, as explained hereinabove, the land is held by Mahant on account of his being co-sharer in the shamlat land and nobody has dedicated it to the temple. The plaintiff or the Mahants, who were his predecessors, cannot be said to have dedicated this land to the temple, because if it were so, the suit property like the land comprised in two other khataunis, would have also been entered in the possession of the temple. The two courts below have used the order of the Financial Commissioner as a piece of evidence, which in fact is not. This is only a finding arrived at by the Financial Commissioner on the basis of an enquiry conducted by him, under Section 6 of the Act. The Civil Court, which had the jurisdiction in this case and was therefore, duty bound to determine and adjudicate upon the civil rights, involved in the case, ought not to have used the

finding of the Financial Commissioner, which in fact is based on no evidence, as demonstrated above, as a piece of evidence.

21. Learned counsel for the respondent argued that the civil court's jurisdiction was barred in the matter, in view of the provisions of Section 32 of the Act. Section 32 of the Act, reads as follows:-

> "Save as expressly provided in this Act, no Civil Court shall have jurisdiction to entertain or adjudicate upon any dispute or matter which is to be decided by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive."

22. A bare reading of the above reproduced provision of the Act, shows that jurisdiction of the civil is barred in respect of that decision or order, which has been made final and conclusive by some provision of the Act. An order passed by a Commissioner (in this case the Financial Commissioner, who was called upon to exercise the powers of Commissioner by this court in CWP No. 338 of 1987, decided on 25.4.1988), under sub-section (3) of Section 6 of the Act, has not been declared to be final and conclusive by any provisions of the Act.

23. As a result of the above discussion, all the three questions upon which the appeal was admitted are answered in favour of the appellant and against the respondents- defendants.

24. Consequently, the appeal is accepted, the judgement and decree of the trial court, dismissing the suit of the plaintiff-appellant and the judgement and decree of the first appellate court affirming the decree of dismissal of the suit passed by the trial court,

are set-aside. Suit of the appellant- plaintiff is decreed and it is hereby declared that the suit property is not the property of the shrine and so it is not liable to be included in Form-A register, required to be prepared and maintained, under Section 6 of the Act, and the respondents- defendants are restrained from including the suit property in the said register or interfering in the suit property in any manner whatsoever.

November 24, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**